

FILED  
U.S. DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
WAYCROSS DIVISION 2008 DEC -8 PM 3: 54

CLEAR R. Ark  
SO. DIST. OF GA.

FRANKLIN L. WILLIAMS,

Plaintiff,

v.

WARE COUNTY JURY  
COMMISSIONERS,

Defendant.

CIVIL ACTION NO.: CV508-070

**ORDER AND MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff, an inmate currently incarcerated at Men's State Prison in Hardwick, Georgia, filed a complaint in the Ware County Superior Court. On September 22, 2008, Plaintiff filed a Motion of Removal seeking to proceed in this Court.

The federal removal statute, in pertinent part, provides:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed *by the defendant or the defendants* to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a) (emphasis added). In accordance with the plain language of this statute, only defendants may remove an action from state to federal court. Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 104-05 (1941). The purpose of restricting the right of removal to the defendant is to restrict removal to the party who had no choice in

selection of the forum. Plaintiff fails to show any reason why, as a plaintiff, he has any right to remove this action to federal court. Plaintiff's case should be remanded to the Superior Court of Ware County, as Plaintiff lacks standing to remove under 28 U.S.C. §1441(a).

Accordingly, it is my **RECOMMENDATION** that this action be remanded to the Ware County Superior Court. In addition, Plaintiff has filed a Motion to Amend and a Motion for Demand for Jury Trial. Both of Plaintiff's Motions are **DISMISSED**.

**SO ORDERED** and **REPORTED** and **RECOMMENDED**, this 8<sup>th</sup> day of December, 2008.

  
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JAMES E. GRAHAM  
UNITED STATES MAGISTRATE JUDGE